



Agency Budget Draft
State of Wisconsin
2013 - 2014 LEGISLATURE

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LRB-0254/P1

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT** .,; **relating to:** the budget.

Analysis by the Legislative Reference Bureau
TRANSPORTATION

HIGHWAYS

Under current law, DOT is responsible for maintenance of the state trunk highway system. DOT may perform highway maintenance or it may contract with counties and municipalities to provide highway maintenance services on state trunk highways. General maintenance activities include snow and ice removal, interim repair of highway surfaces, vegetation control, and other operations, activities, and processes required on a continuing basis for the preservation of state highways. Maintenance activities also include the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, and intelligent transportation systems (specialized systems, such as roadway detector loops, closed circuit television, variable message signs, or ramp meters, used to improve efficiency or safety). Under current law, "highway improvements" include construction, reconstruction, and rehabilitation of highways and processes incidental to building or bettering highways, but do not include maintenance and specifically do not include the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, or intelligent transportation systems unless incidental to a highway improvement project.

Under current law, highway improvements and highway maintenance are generally funded from different DOT appropriations.

This bill creates new state, federal, and local appropriations dedicated to funding state highway maintenance activities that are performed by counties or municipalities under contract with DOT. Thus, the bill establishes separate funding for state highway maintenance performed by DOT and for state highway maintenance performed by counties and municipalities under contract with DOT.

The bill also makes changes with respect to which highway operations and activities are considered highway improvements and which are considered highway maintenance, which affects the source of funding for these operations and activities. Under this bill, highway maintenance activities no longer include, and highway improvements no longer exclude, the installation, replacement, or rehabilitation of traffic control signals and intelligent transportation systems, but maintenance of traffic control signals and intelligent transportation systems are still considered maintenance activities. The bill also specifies that only general maintenance activities, as described by statute, and specified other maintenance activities are excluded from the definition of "highway improvements." In addition, the bill specifies that the following highway operations or activities are considered highway improvements if they do not include the activities described by statute as general maintenance or the other specifically-described maintenance activities excluded from the definition of highway improvements: 1) Operations or activities that restore or improve a highway and that add four or more years of useful life to the highway; 2) Operations or activities that are time sensitive and normally associated with emergency situations involving immediate safety risks or some degree or unacceptable mobility delays; and 3) Operations or activities that are life-cycle or investment driven and that are based on an asset management philosophy in which taking action prevents or delays deterioration of highway system functionality. The bill also eliminates statutory references to and descriptions of "special maintenance activities."

Under current law, if DOT contracts with a county or municipality to perform maintenance on state trunk highways, DOT must pay the county or municipality the actual cost of performing the maintenance work based on the itemized and verified accounts submitted by the county or municipality to DOT for the work.

This bill allows DOT and the county or municipality to agree to a payment method and terms other than that required by current law, including payment according to a contract price for maintenance services rather than payment for the actual cost of the maintenance.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 20.395 (3) (aq) of the statutes is amended to read:

20.395 (3) (aq) *Southeast Wisconsin freeway megaprojects, state funds.* As a continuing appropriation, the amounts in the schedule for southeast Wisconsin freeway megaprojects under s. 84.0145 and for the purpose specified in s. 84.017 (3). This paragraph does not apply to the installation, replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals~~, highway lighting, or pavement markings, ^{to} or the maintenance of traffic control signals or intelligent transportation systems, unless incidental to a southeast Wisconsin freeway megaproject.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

SECTION 2. 20.395 (3) (ax) of the statutes is amended to read:

20.395 (3) (ax) *Southeast Wisconsin freeway megaprojects, federal funds.* All moneys received from the federal government for southeast Wisconsin freeway megaprojects under s. 84.0145 and for the purpose specified in s. 84.017 (3), for such purposes. This paragraph does not apply to the installation, replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals~~, highway lighting, ^{to} or pavement markings, or the maintenance of traffic control signals or intelligent transportation systems, unless incidental to a southeast Wisconsin freeway megaproject.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

SECTION 3. 20.395 (3) (cq) of the statutes is amended to read:

20.395 (3) (cq) *State highway rehabilitation, state funds.* As a continuing appropriation, the amounts in the schedule for improvement of existing state trunk and connecting highways; for improvement of bridges on state trunk or connecting highways and other bridges for which improvement is a state responsibility, for

1 necessary approach work for such bridges and for replacement of such bridges with
 2 at-grade crossing improvements; for the construction and rehabilitation of the
 3 national system of interstate and defense highways and bridges and related
 4 appurtenances; ~~for special maintenance activities under s. 84.04 on roadside~~
 5 ~~improvements; for bridges under s. 84.10; for the bridge project under s. 84.115; for~~
 6 ~~payment to a local unit of government for a jurisdictional transfer under s. 84.02 (8);~~
 7 ~~for the disadvantaged business demonstration and training program under s.~~
 8 ~~84.076; for the purpose specified in s. 84.017 (3); for the transfers required under~~
 9 ~~1999 Wisconsin Act 9, section 9250 (1) and 2003 Wisconsin Act 33, section 9153 (4q);~~
 10 ~~and for the purposes described under 1999 Wisconsin Act 9, section 9150 (8g), 2001~~
 11 ~~Wisconsin Act 16, section 9152 (4e), and 2007 Wisconsin Act 20, section 9148 (9i) (b)~~
 12 ~~and (9x). This paragraph does not apply to any southeast Wisconsin freeway~~
 13 ~~megaprojects under s. 84.0145, to any southeast Wisconsin freeway rehabilitation~~
 14 ~~projects under s. 84.014 that also qualify as major highway projects under s. 84.013,~~
 15 ~~or to the installation, replacement, rehabilitation, or maintenance of highway signs,~~
 16 ~~traffic control signals, highway lighting, or pavement markings, or ^{to} the maintenance~~
 17 ~~of traffic control signals or intelligent transportation systems, unless incidental to~~
 18 the improvement of existing state trunk and connecting highways.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16;
 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234;
 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27,
 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146,
 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2)
 (1).

19 **SECTION 4.** 20.395 (3) (cr) of the statutes is amended to read:

20 20.395 (3) (cr) *Southeast Wisconsin freeway rehabilitation, state funds.* As a
 21 continuing appropriation, the amounts in the schedule for rehabilitation of
 22 southeast Wisconsin freeways, including reconstruction and interim repair of the
 23 Marquette interchange in Milwaukee County. This paragraph does not apply to the

1 installation, replacement, rehabilitation, or maintenance of highway signs, traffic
2 control signals, highway lighting, or pavement markings, or ^{to} the maintenance of
3 traffic control signals or intelligent transportation systems, unless incidental to
4 rehabilitation of southeast Wisconsin freeways. No moneys may be encumbered
5 from this appropriation account after June 30, 2011. Notwithstanding s. 20.001 (3)
6 (c), any unencumbered balance in this appropriation account on July 1, 2011, shall
7 be transferred to the appropriation account under par. (cq) except that the amount
8 specified in 2011 Wisconsin Act 32, section 9148 (7f) (a), shall be transferred to the
9 appropriation account under par. (aq).

NOTE: NOTE: Par. (cr) is shown as affected by 2011 Wis. Acts 32 and 257 and as merged by the legislative reference bureau under s. 13.92 (2) (i).NOTE:

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322c to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 380; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

10 SECTION 5. 20.395 (3) (cv) of the statutes is amended to read:

11 20.395 (3) (cv) *State highway rehabilitation, local funds.* All moneys received
12 from any local unit of government or other source for the specific information sign
13 program under s. 86.195; for improvement of existing state trunk and connecting
14 highways; for improvement of bridges on state trunk or connecting highways and
15 other bridges for which improvement is a state responsibility, for necessary approach
16 work for such bridges and for replacement of such bridges with at-grade crossing
17 improvements; for the construction and rehabilitation of the national system of
18 interstate and defense highways and bridges and related appurtenances; ~~for special~~
19 ~~maintenance activities under s. 84.04 on roadside improvements;~~ for the bridge
20 project under s. 84.115; for the railroad and utility alteration and relocation loan
21 program under s. 84.065; for the purpose specified in s. 84.017 (3); and for the
22 disadvantaged business demonstration and training program under s. 84.076, for
23 such purposes. This paragraph does not apply to any southeast Wisconsin freeway

megaprojects under s. 84.0145 or to any southeast Wisconsin freeway rehabilitation projects under s. 84.014 that also qualify as major highway projects under s. 84.013.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

SECTION 6. 20.395 (3) (cx) of the statutes is amended to read:

20.395 (3) (cx) *State highway rehabilitation, federal funds.* All moneys received from the federal government for improvement of existing state trunk and connecting highways; for improvement of bridges on state trunk or connecting highways and other bridges for which improvement is a state responsibility, for necessary approach work for such bridges and for replacement of such bridges with at-grade crossing improvements; for the construction and rehabilitation of the national system of interstate and defense highways and bridges and related appurtenances; ~~for special maintenance activities under s. 84.04 on roadside improvements;~~ for the bridge project under s. 84.115; for the purpose specified in s. 84.017 (3); and for the disadvantaged business demonstration and training program under s. 84.076; and all moneys received under 2003 Wisconsin Act 33, section 9153 (4q); for such purposes. This paragraph does not apply to any southeast Wisconsin freeway megaprojects under s. 84.0145 or to any southeast Wisconsin freeway rehabilitation projects under s. 84.014 that also qualify as major highway projects under s. 84.013.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

SECTION 7. 20.395 (3) (cy) of the statutes is amended to read:

20.395 (3) (cy) *Southeast Wisconsin freeway rehabilitation, federal funds.* All moneys received from the federal government for rehabilitation of southeast

1 Wisconsin freeways, including reconstruction and interim repair of the Marquette
2 interchange in Milwaukee County, for such purposes. This paragraph does not apply
3 to the installation, replacement, rehabilitation, or maintenance of highway signs,
4 traffic control signals, highway lighting, or pavement markings, or ^{to} the maintenance
5 of traffic control signals or intelligent transportation systems, unless incidental to
6 rehabilitation of southeast Wisconsin freeways. No moneys may be encumbered
7 from this appropriation account after June 30, 2011. Notwithstanding s. 20.001 (3)
8 (c), any unencumbered balance in this appropriation account on July 1, 2011, shall
9 be transferred to the appropriation account under par. (cx) except that the amount
10 specified in 2011 Wisconsin Act 32, section 9148 (7f) (c), shall be transferred to the
11 appropriation account under par. (ax).

NOTE: NOTE: Par. (cy) is shown as affected by 2011 Wis. Acts 32 and 257 and as merged by the legislative reference bureau under s. 13.92 (2) (i).NOTE:

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (e), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

12 (i). SECTION 8. 20.395 (3) (eq) of the statutes is amended to read:

13 20.395 (3) (eq) *Highway maintenance, repair, and traffic system management*
14 *and operations, state funds.* As a continuing appropriation, the amounts in the
15 schedule for the maintenance and repair of roadside improvements under s. 84.04,
16 state trunk highways under s. 84.07, and bridges that are not on the state trunk
17 highway system under s. 84.10; for permit issuance and other highway operations,
18 including the installation, replacement, rehabilitation, or maintenance of highway
19 signs, traffic control signals, highway lighting, and pavement markings, and the
20 maintenance of traffic control signals and intelligent transportation systems, under
21 ss. 84.04, 84.07, 84.10, and 348.25 to 348.27 and ch. 349; ~~for the grant under 2005~~
22 ~~Wisconsin Act 25, section 9148 (3f); and for the disadvantaged business~~
23 demonstration and training program under s. 84.076. This paragraph does not apply

1 to special maintenance activities under s. 84.04 on roadside improvements
2 performed by county highway committees or municipalities under contract with the
3 department as provided in s. 84.07 (1).

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 SECTION 9. 20.395 (3) (ev) of the statutes is amended to read:

5 20.395 (3) (ev) *Highway maintenance, repair, and traffic system management*
6 *and operations, local funds.* All moneys received from any local unit of government
7 or other sources for the maintenance and repair of roadside improvements under s.
8 84.04, state trunk highways under s. 84.07, and bridges that are not on the state
9 trunk highway system under s. 84.10; for signing under s. 86.195; for highway
10 operations such as permit issuance, pavement marking, highway signing, traffic
11 signalization signal maintenance, and highway lighting under ss. 84.04, 84.07,
12 84.10, and 348.25 to 348.27 and ch. 349; and for the disadvantaged business
13 demonstration and training program under s. 84.076; for such purposes. This
14 paragraph does not apply to special maintenance activities under s. 84.04 on
15 roadside improvements performed by county highway committees or municipalities
16 under contract with the department as provided in s. 84.07 (1).

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

17 SECTION 10. 20.395 (3) (ex) of the statutes is amended to read:

18 20.395 (3) (ex) *Highway maintenance, repair, and traffic system management*
19 *and operations, federal funds.* All moneys received from the federal government for

1 the maintenance and repair of roadside improvements under s. 84.04, state trunk
 2 highways under s. 84.07, and bridges that are not on the state trunk highway system
 3 under s. 84.10; for permit issuance and other highway operations, including the
 4 installation, replacement, rehabilitation, or maintenance of highway signs, traffic
 5 ~~control signals~~, highway lighting, and pavement markings, and the maintenance of
 6 traffic control signals and intelligent transportation systems, under ss. 84.04, 84.07,
 7 84.10, and 348.25 to 348.27 and ch. 349; and for the disadvantaged business
 8 demonstration and training program under s. 84.076; for such purposes. This
 9 paragraph does not apply to special maintenance activities ~~under s. 84.04 on~~
 10 roadside improvements performed by county highway committees or municipalities
 11 under contract with the department as provided in s. 84.07 (1).

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

12 **SECTION 11.** 20.395 (3) (fq) of the statutes is created to read:

13 20.395 (3) (fq) *County and municipal maintenance activities, state funds.* As
 14 a continuing appropriation, the amounts in the schedule for maintenance activities
 15 performed by county highway committees or municipalities under contract with the
 16 department as provided in s. 84.07 (1).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

17 **SECTION 12.** 20.395 (3) (fv) of the statutes is created to read:

18 20.395 (3) (fv) *County and municipal maintenance activities, local funds.* All
 19 moneys received from any local unit of government or other sources for maintenance
 20 activities performed by county highway committees or municipalities under contract
 21 with the department as provided in s. 84.07 (1), for such purposes.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 13. 20.395 (3) (fx) of the statutes is created to read:

20.395 (3) (fx) *County and municipal maintenance activities, federal funds.* All moneys received from the federal government for maintenance activities performed by county highway committees or municipalities under contract with the department as provided in s. 84.07 (1), for such purposes.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 14. 84.06 (1) of the statutes is renumbered 84.06 (1) (intro.) and amended to read: ^{SC} Definitions.

84.06 (1) (intro.) In this section:

(a) Subject to par. (b), "improvement" or "highway improvement" includes construction, all of the following:

1. Construction, reconstruction, rehabilitation, and processes incidental to building, fabricating, or bettering a highway or street, ~~but not,~~

(b) 1. General maintenance. ~~The terms do not include the activities described in s. 84.07 (1).~~

2. The installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, or pavement markings, or the maintenance of traffic control signals or intelligent transportation systems, unless incidental to building, fabricating, or bettering a highway or street.

SECTION 15. 84.06 (1) (a) 2., 3. and 4. of the statutes are created to read:

84.06 (1) (a) 2. Highway operations or activities that restore or improve a highway and that add 4 or more years of useful life to the highway.

1 3. Highway operations or activities that are time sensitive and normally
2 associated with emergency situations involving immediate safety risks or some
3 degree ^{of} unacceptable mobility delays.

4 4. Highway operations or activities that are life-cycle or investment driven and
5 that are based on an asset management philosophy in which taking action prevents
6 or delays deterioration of highway system functionality.

7 **SECTION 16.** 84.06 (1) (b) (intro.) of the statutes ^{is} are created to read:

8 84.06 (1) (b) (intro.) "Improvement" or "highway improvement" does not
9 include any of the following:

10 **SECTION 17.** 84.07 (1) of the statutes is amended to read:

11 84.07 (1) STATE EXPENSE; WHEN DONE BY COUNTY OR MUNICIPALITY. The state trunk
12 highway system shall be maintained by the state at state expense. The department
13 shall prescribe by rule specifications for such maintenance and may contract with
14 any county highway committee or municipality to have all or certain parts of the
15 work of maintaining the state trunk highways within or beyond the limits of the
16 county or municipality, including interstate bridges, performed by the county or
17 municipality, and any county or municipality may enter into such contract. General
18 maintenance activities include the application of protective coatings, the removal
19 and control of snow, the removal, treatment and sanding of ice, interim repair of
20 highway surfaces and adjacent structures, and all other operations, activities and
21 processes required on a routine, continuing basis for the preservation of the
22 highways on the state trunk system, and including the care and protection of trees
23 and other roadside vegetation and suitable planting to prevent soil erosion or to
24 beautify highways pursuant to s. 66.1037, and all routine measures deemed
25 necessary to provide adequate traffic service. ~~Special maintenance activities include~~

1 ~~the restoration, reinforcement, complete repair or other activities which the~~
2 ~~department deems are necessary on an individual basis for specified portions of the~~
3 ~~state trunk system.~~ Maintenance activities also include the installation,
4 replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals,~~
5 highway lighting, and pavement markings, and the maintenance of traffic control
6 signals and intelligent transportation systems. The department may contract with
7 a private entity for services or materials or both associated with the installation,
8 replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals,~~
9 highway lighting, and pavement markings, and the maintenance of traffic control
10 signals and intelligent transportation systems.

History: 1971 c. 125; 1975 c. 39; 1975 c. 394 s. 27; 1975 c. 421; 1977 c. 29 ss. 933 to 935, 1654 (8) (a); 1977 c. 418; 1979 c. 161; 1985 a. 29; 1993 a. 246; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 214; 2011 a. 32.

***NOTE: Regarding the last sentence of this subsection, I believe the contracting authority for the installation, replacement, or rehabilitation of traffic control signals and intelligent transportation systems falls under s. 84.06 (2) (a), not s. 84.07 (1). Because s. 84.06 (2) (a) already allows (actually, requires) DOT to contract for these improvements, I did not amend s. 84.06 (2) (a). If you want to authorize DOT to undertake these improvements on its own and without bidding, then I believe that I should add a provision to s. 84.06 allowing DOT to install, replace, or rehabilitate traffic control signals and intelligent transportation systems on its own and without putting the work out to bid.

X

11 **SECTION 18.** 84.07 (2) of the statutes is renumbered 84.07 (2) (a) and amended
12 to read:

13 84.07 (2) (a) ~~When~~ Except as provided in par. (b), when any county or
14 municipality maintains the state trunk highways within or beyond the limits of the
15 county or municipality, including interstate bridges, in compliance with the
16 arrangement with the department, the department shall pay the actual cost of the
17 maintenance, including the allowance for materials and the use of county or
18 municipal machinery and overhead expenses agreed upon in advance. ~~The~~ Except
19 as provided in par. (b), the payments shall be made upon presentation by the county
20 highway committee or municipal clerk of a properly itemized and verified account.

1 ~~The For payments made under this paragraph, the~~ county highway committee or
2 municipal clerk shall present the itemized accounts for general maintenance work
3 no later than one month following the period during which the work is performed.

History: 1971 c. 125; 1975 c. 39; 1975 c. 394 s. 27; 1975 c. 421; 1977 c. 29 ss. 933 to 935, 1654 (8) (a); 1977 c. 418; 1979 c. 161; 1985 a. 29; 1993 a. 246; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 214; 2011 a. 32.

4 **SECTION 19.** 84.07 (2) (b) of the statutes is created to read:

5 84.07 (2) (b) When any county or municipality maintains the state trunk
6 highways within or beyond the limits of the county or municipality, including
7 interstate bridges, in compliance with the arrangement with the department, the
8 department and the county or municipality may agree to a payment method and
9 terms other than that specified in par. (a), including payment according to a contract
10 price for maintenance services rather than payment of the actual cost of the
11 maintenance.

12 (END)

(D-Note)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0254/P1dn

ARG: /:....

src

- date -

ATTN: Linda Merriman Hitchman

Regarding item 7. of the drafting instructions, I cannot find any statutory restriction prohibiting a county or municipality from performing maintenance services for DOT on a regional basis. As I read s. 84.07 (1), the language clearly allows maintenance services to be provided beyond the county's or municipality's limits with no restriction on how far beyond those limits the services can be provided. To my knowledge, the newly created s. 59.52 (30) does not apply to maintenance for DOT. Efforts were made last session to restrict the provision of maintenance services beyond a county's or municipality's limits, but I believe those efforts were unsuccessful as pertinent here. I have therefore not included any provision in this draft related to this issue.

The change in this draft to the definition of "improvement" in s. 84.06 (1) will also impact s. 84.065 (see s. 84.065 (2) (a)) and s. 84.078 (see s. 84.078 (1) (ar)). Please advise if you think this creates any problems.

I have created s. 84.06 (a) 3. and 4. to track the definitions provided to me of corrective maintenance and preventative maintenance. With minor modification, I used the language of the definitions provided by DOT. However, I find these definitions to be vague and I can't say that I really understand them, so I wonder if DOT can tighten them up or make them more intelligible to the lay reader.

The changes in s. 84.06 (1) may be difficult to read because of the order for bill sections required by our drafting conventions. Even though created s. 84.06 (1) (b) (intro.) appears later in this bill than s. 84.06 (1) (b) 1. and 2., in the statutes the (intro.) will precede 1. and 2. and the provision will not be so confusing.

As I noted in my drafter's note to LRB-0161, the provisions of LRB-0254 will eventually need to be merged with those in LRB-0161, presumably when DOA has these drafts incorporated into the budget bill.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0254/P1dn

ARG:sac:rs

October 23, 2012

ATTN: Linda Merriman Hitchman

Regarding item 7. of the drafting instructions, I cannot find any statutory restriction prohibiting a county or municipality from performing maintenance services for DOT on a regional basis. As I read s. 84.07 (1), the language clearly allows maintenance services to be provided beyond the county's or municipality's limits with no restriction on how far beyond those limits the services can be provided. To my knowledge, the newly created s. 59.52 (30) does not apply to maintenance for DOT. Efforts were made last session to restrict the provision of maintenance services beyond a county's or municipality's limits, but I believe those efforts were unsuccessful as pertinent here. I have therefore not included any provision in this draft related to this issue.

The change in this draft to the definition of "improvement" in s. 84.06 (1) will also impact s. 84.065 (see s. 84.065 (2) (a)) and s. 84.078 (see s. 84.078 (1) (ar)). Please advise if you think this creates any problems.

I have created s. 84.06 (a) 3. and 4. to track the definitions provided to me of corrective maintenance and preventative maintenance. With minor modification, I used the language of the definitions provided by DOT. However, I find these definitions to be vague and I can't say that I really understand them, so I wonder if DOT can tighten them up or make them more intelligible to the lay reader.

The changes in s. 84.06 (1) may be difficult to read because of the order for bill sections required by our drafting conventions. Even though created s. 84.06 (1) (b) (intro.) appears later in this bill than s. 84.06 (1) (b) 1. and 2., in the statutes the (intro.) will precede 1. and 2. and the provision will not be so confusing.

As I noted in my drafter's note to LRB-0161, the provisions of LRB-0254 will eventually need to be merged with those in LRB-0161, presumably when DOA has these drafts incorporated into the budget bill.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Gary, Aaron

From: Richter, Anna - DOT <Anna.Richter@dot.wi.gov>
Sent: Tuesday, October 23, 2012 1:47 PM
To: Gary, Aaron
Cc: Merriman Hitchman, Linda H - DOT; Nooyen, Cindy - DOT
Subject: FW: Draft review: LRB -0254/P1 Topic: Change maintenance definition and add appropriation ✓
Attachments: 13-0254/P1.pdf; DraftersNote1.pdf

Hi Aaron,

One quick comment...

For the three new county and municipal maintenance appropriations, could we use the following alphas instead:

- State appropriation: (3)(es) → *fg*
- Local appropriation: (3)(ew) → *fv*
- Federal appropriation (3)(ey) → *fx*

There may be other actual content changes to the language...but these alphas will just help us keep order a bit better over here.

Thanks!
Anna

From: LRB.Legal [<mailto:LRB-LegalServices@legis.wisconsin.gov>]
Sent: Tuesday, October 23, 2012 10:31 AM
To: Richter, Anna - DOT
Subject: Draft review: LRB -0254/P1 Topic: Change maintenance definition and add appropriation

Following is the PDF version of draft LRB -0254/P1 and drafter's note.

Gary, Aaron

From: Merriman Hitchman, Linda H - DOT <Linda.MerrimanHitchman@dot.wi.gov>
Sent: Monday, October 29, 2012 12:16 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT
Subject: FW: Maintenance Appropriation Language

Hi Aaron

Met with the Section Chief in the Bureau of Highway Maintenance that is the most involved with delivering the program. He had some very specific as well as some general points to the draft LRB-0254/P1

A couple key points – he want to title the new appropriations as “Routine Maintenance” instead of referencing counties and municipalities. This is in keeping with the program’s desire to have the focus be on what is being delivered as opposed to who is doing the delivery. He is concerned that titling it as I suggested makes it sound too much like an aide program.

He also requests you delete the term “general” in respect to maintenance.

The rest of his suggestions are easier for you to read his points while looking at the draft rather than me trying to explain what his intent is.

In general, if it doesn’t conflict with law or appropriate drafting, we’d like to implement his proposed changes.

Please let me know if I need to clarify or follow up.

I’ll be resending the sponsorship draft with some requested changes hopefully this afternoon too.

Linda

From: Woltmann, Mark - DOT
Sent: Thursday, October 25, 2012 4:16 PM
To: Merriman Hitchman, Linda H - DOT; Richter, Anna - DOT
Cc: Vieth, David - DOT
Subject: Maintenance Appropriation Language

Linda/Anna; Attached is the file with the comments we discussed about potential changes to the initial LRB draft.



Analysis: It was easier for me to write how I understand what we're trying to do. Hopefully, this can be used in conjunction with what Aaron has prepared.

p.2

This bill distinguishes between routine maintenance activities performed on an annual or scheduled basis on the state trunk highway system and coordinated regionally from other highway management and operations activities that are coordinated centrally. This bill creates new state, federal, and local appropriations dedicated to separately funding routine state highway maintenance activities from funding for highway management and operations directed centrally. Routine maintenance is typically performed by counties and municipalities under contract with DOT.

The bill also makes changes to distinguish improvement investments from highway maintenance activities, which affects the source of funding for these operations and activities. Under this bill, highway maintenance activities no longer include the installation, replacement, or rehabilitation of traffic control signals and intelligent transportation systems. Instead, the installation, replacement, or rehabilitation of traffic control signals and intelligent transportation systems are now included as highway improvements. Annual or routine upkeep of traffic signals and intelligent systems are still considered maintenance activities.

The bill also specifies that only (delete the word general) maintenance activities, as described by statute, and specified other maintenance activities are excluded from the definition of "highway improvements." In addition, the bill specifies that the following highway operations or activities are considered highway improvements when they: 1) restore or improve a highway and add four or more years of useful life to the highway; 2) are time sensitive repairs and normally associated with emergency situations involving immediate safety risks or some degree of unacceptable mobility delays; and, 3) are life-cycle or investment driven and are based on an asset management philosophy in which taking action prevents or delays deterioration of highway system functionality. The bill also eliminates statutory references to and descriptions of "special maintenance activities."

DOES THE TERM "HIGHWAY" INCLUDE OTHER FEATURES OUTSIDE THE TRAVELLED WAY? If not, we may need to elaborate or expand to include roadside needs, etc.

p.3 line 4 (begin the paragraph with the phrase currently ending the paragraph)

UNLESS INCIDENTAL TO A SOUTHEAST WISCONSIN FREEWAY MEGAPROJECT, this paragraph does not apply to the STAND ALONE installation, replacement.....

p.3 line 13 (same as above)

p.4 line 9 (same as above)

p.4 line 20 (same as above)

p.6 line 16 (same as above)

p.7 end of line 4

add: connecting highways under 84.02,

p.7 line 7

add: "stand alone" installation

p7. Lines 12 to 15

replace with: This paragraph does not apply to routine maintenance activities performed under contract with the department as provided in s. 84.07 (1).

CAN WE MAKE THE LANGUAGE UNDER 20.395 (3) (EV) AND 20395 (3) (EX) READ THE SAME? (see below)

For permit issuance and other highway operations, including the stand alone installation, replacement, rehabilitation, or maintenance of highway signs, highway lighting, and pavement markings, and the maintenance of traffic control signals and intelligent transportation systems, under ss. 84.04, 84.07, 84.10, and 348.25 to 348.27 and ch. 349; and for the disadvantaged business demonstration and training program under s.84.076. This paragraph does not apply to routine maintenance activities performed under contract with the department as provided in s. 84.07 91).

p. 8 line 21 thru p.9 line 2

20.395 (3) (fq) Routine maintenance activities, state funds. As a continuing appropriation, the amounts in the schedule for regularly scheduled or yearly maintenance activities performed under contract with the department as provided in s. 84.07 (1).

p. 9 lines 4 thru 7 (same as above)

p.9 lines 9 thru 12 (same as above)

p. 9 line 20

Delete "General"

p.10 lines 1 thru 4

Unless incidental to building, fabricating, or bettering a highway or street, the stand alone installation, replacement, rehabilitation, or maintenance of highway signs, highway lighting, or pavement markings, or the maintenance of traffic control signals or intelligent transportation systems.

p. 10 line 6

Repairs or activities that restore or improve a

p. 10 line 8

Repairs or activities that are time sensitive and normally

p.10 line 10

Repairs or activities that are life-cycle or investment driven and

p. 10 line 18

84.07 (1) Routine maintenance. The state trunk.....

p. 10 line 20

Delete "by rule"

p.10 line 21

Delete "committee" and add "department"

p.10 line 24

Delete "General"

p. 11 line 3

Delete "routine" and add "regular"

p. 11 line 10

Add "stand alone"

p. 11 line 14

Add "stand alone"

Gary, Aaron

From: Merriman Hitchman, Linda H - DOT <Linda.MerrimanHitchman@dot.wi.gov>
Sent: Tuesday, November 06, 2012 2:18 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT; Hammer, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Hi Aaron

We met to go over the maintenance draft and resolve the remaining issues.

1. On page 10, lines 6, 8 and 11, we do not need to change "Highway operations" to repairs, as was previously requested.
2. On page 11, line 3, please do change "routine" to "regular"
3. Re: page 11 lines 10-16. You and I had discussed whether we needed any clarification that if those things are incidental to an improvement project, they are not maintenance activities. You indicated it is open ended at this point, and DOT could theoretically choose to fund those activities as improvement or maintenance. We do not want to make any changes to this, we want to leave it as is.
4. On page 10, line 10, "or" should be "of"
5. On page 10 line 20 we do not need to delete "by rule." We will leave current law.
6. You do not need to add the language on "Connecting highways under s. 84.02" to page 7 line 4.
7. Re: your question of November 2 about the excerpt from the analysis: our intention is that the new appropriations are "dedicated to funding routine highway maintenance activities that are performed under contract with DOT." without the 1) and 2) that you have in the excerpt. This is the thinking: while the program intends to do almost all routine maintenance under contract to counties, in some cases counties may not be able or willing to do something that DOT needs done. In that case we will contract from the new appropriation for that routine maintenance activity with a private business. That could be for any of the routine maintenance activities, not just those related to signs, lighting, pavement marking, etc. So the law change needs to leave it open so that any routine maintenance activities could if necessary be funded from the new appropriations. S. 20.395 (3)(eq) would not be used to pay for activities under contract to the counties and munis, as you have indicated in the draft. We'd prefer that not be highlighted in the analysis although of course it will be a point of discussion if this moves forward.

To the best of my recollection, these are the unresolved questions. Please remind me if there are others I am missing. Thank you very much for your patience with the evolution of our thinking.

Linda

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Friday, November 02, 2012 2:17 PM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT; Hammer, Paul - DOT; Nilsen, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Sorry to beat a dead horse, but can you confirm that this excerpt from the new analysis is what DOT wants (in terms of the appropriations). Thanks. Aaron

This bill creates new state, federal, and local appropriations dedicated to funding routine state highway maintenance activities that are performed under contract with DOT by: 1) counties or municipalities; and 2)

private entities if the routine maintenance activities consist of services or materials or both associated with the installation, replacement, rehabilitation, or maintenance of highway signs, highway lighting, or pavement markings or the maintenance of traffic control signals or intelligent transportation systems. Thus, the bill establishes separate funding for routine state highway maintenance performed under contract as described and for other types of state highway maintenance, including maintenance activities performed directly by DOT and non-routine maintenance.

From: Gary, Aaron
Sent: Friday, November 02, 2012 1:39 PM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT; Hammer, Paul - DOT; Nilsen, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Hi Linda,

Please see my response to your question below and let me know if you want a change made.

I have made the changes immediately below.

In response to your prior email, I had also made a couple of minor changes that are not in the list below. I'd like to know whether I should keep those changes or erase them:

1. On p. 10, lines 6, 8, and 11, changing "Highway operations" at the beginning of each subdivision to "Repairs".
2. On p. 11, line 3, changing "routine" to "regular".

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Merriman Hitchman, Linda H - DOT [<mailto:Linda.MerrimanHitchman@dot.wi.gov>]
Sent: Friday, November 02, 2012 10:33 AM
To: Gary, Aaron
Cc: Richter, Anna - DOT; Hammer, Paul - DOT; Nilsen, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Hi Aaron

I met with Paul Nilsen of our OGC and Paul Hammer of OPBF to identify changes we need to accomplish our intent.

Here are some general comments followed by itemized changes we are requesting to 13-0254/P1.

- We will not include many of the general language changes previously suggested by program staff. I understand your point about leaving current law as is unless there is a particular problem we are trying to solve.
- We did not try to define “stand-alone” as we don’t think we need this in the context of the other language.
- I am waiting for an explanation from program staff as to why they wanted to add “connecting highways under 84.02” to page 7 line 4. I will send you clarification on this separately.
- We are changing the new appropriations to be broader, removing the reference to “counties and municipalities” in the title and in the description. This is based on clarification from department management as to how restrictive vs. flexible we want this new language to be.

Page 7, Section 8. Line 13:

Please add routine in front of maintenance. *(we are trying to be consistent about the new appropriations primarily funding routine maintenance)*

Page 8, Section 11. Line 21:

We would like 20.395(3)(fq) aka (es) to read:

20.395 (3) (es) Routine maintenance activities, state funds. As a continuing appropriation, the amounts in the schedule for routine maintenance activities performed under contract with the department as provided in s. 84.07 (1).

We would like the same change to apply to the appropriations created in Section 12 and Section 13. *(I recognize this is a change to our previous instructions. We think that this gives us what we need, a separate appropriation for routine maintenance, but allows more flexibility to accomplish activities under other contracts, if needed. In combination with the new language on page 7 Section 8 lines 14 and 15, we think this would mean that 20.395 (3) (es) could be used to fund contracts with multiple types of providers, but 20.395 (3) (eq) could not be used to fund routine maintenance under contract to counties.)*

Page 9 line 20

Delete “General” – *the program wants to get rid of both general and special as these are no longer useful terms*

Page 10 Section 17 line 18

Please change the title of the section to
84.07(1) Routine Maintenance *(trying to create consistency)*

Page 10 Section 17 line 24 – delete the word “General”

Question: On Page 11 line 10-16: I just want to be sure we are being as consistent as possible. We have said in 84.06 and 20.395 (3)(eq) that installation, replacement, rehabilitation or maintenance of highway signs, lighting and pavement markings are not eligible for improvement funding unless incidental to a highway improvement project. In this discussion

do we need to make any clarification that IF those things are incidental to an improvement project, they are not maintenance activities? I'm assuming we don't need to make this distinction since what is there now is what existed in current law, but am being sure.

Aaron: That's a good point. My co-drafter prepared this language in 2001 for the budget so I don't know if this was intended or just an oversight. As I read the stats, for installation, replacement, rehab or maint of signs, lighting, etc. that is incidental to an improvement, DOT could theoretically choose to fund it as an improvement under (cq) or as maintenance under (eq) or a little of both. Let me know if you want to leave this as is or close this hole so it could not be funded as maintenance.

Please let me know if this isn't clear, if I've missed something or if these changes conflict with appropriate drafting, etc.

Thanks and sorry this one has taken a few iterations.

Linda

From: Gary, Aaron [<mailto:Aaron.Gary@legis.wisconsin.gov>]
Sent: Thursday, November 01, 2012 11:22 AM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT; Hammer, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Hi Linda,

I have gone through all of the suggested changes.

On a fundamental level, I'm still not sure what DOT wants here. I feel that the feedback from the section chief is not entirely consistent with the initial drafting instructions that I received. In particular, I'm concerned about his suggested changes to the appropriations and your summary of the key points below, which I have highlighted in red below.

Under the /P1 draft, if maintenance is performed by a county or muni, it is funded from one source [(fq) in the draft, which I'm renumbering to (es) per your instruction but I'll call it (fq) here]. If maintenance is performed by DOT, it is funded from a different source [(eq)]. This is a very clean, simple, and clear-cut distinction, and I believe was the instruction by DOT for the draft. As I indicated in our email correspondence, the result is that the funding of maintenance of traffic signals and ITS depends entirely on who does the work (DOT or muni/county), not on the type of work being done. The comment below is therefore inconsistent with the /P1 draft (and its instructions). So I'm trying to figure out whether you need substantive changes to the /P1 draft or whether the comments forwarded to me are mostly stylistic (and in my view create problems). The comments propose adding the additional language to the (fq) appropriation "for regularly scheduled or yearly maintenance activities." This qualifying language limits the appropriation. Was this intended to be a substantive change? In other words, if maintenance work is performed under contract with a muni or county that is not a regularly scheduled or yearly maintenance activity, is DOT's intent that it be funded under (eq) not (fq)? In sum, do you want to make the funding not so clear-cut so that most contract expenses will be funded under (fq) but some might be funded under (eq)? [If DOT believes that ALL maintenance performed by contract by munis/counties will be regularly scheduled or yearly maintenance activities, then adding the new proposed language just muddies the waters and the language in the /P1 should be used.]

Many of the comments seem to suggest rewriting current law in a way that is not necessary to the purposes of this draft (as expressed in the drafting instructions). Our drafting protocol is to avoid doing this whenever possible. Along similar lines, if a statute has been in existence for some time and an agency has been administering the statute without problem, our protocol is also to leave the statute untreated unless a treatment is necessary to achieve a substantive purpose of the draft. I am therefore not inclined to incorporate the suggested rewrites that don't seem to have a substantive effect, including making (3) (ev) and (ex) read the same. I do have some questions about the intent behind other suggested changes, including whether the suggestion is stylistic or there is a problem right now with the statute that is impeding DOT's ability to administer it:

1. I cannot insert "stand alone" as suggested because the meaning of this change is not apparent. Can DOT describe the circumstances/intent behind this suggested addition if DOT wants to pursue including it?
2. Why does DOT suggest adding "connecting highways" to (3) (eq)? Is this intended to have a substantive effect?
3. Regarding the comment "delete 'by rule'" on p. 10, line 20, the rulemaking requirement for maintenance specifications is long-standing. This suggested change seems to me to be significant and not included in the initial instructions. Does DOT really want to eliminate rulemaking here? If so, deleting "by rule" might not accomplish that purpose. I think I would also have to make changes to the provision in ch. 227 that governs the types of activities for which state agencies must engage in rulemaking. You may want to confer with OGC on whether ch. 227 would require rulemaking even if "by rule" were deleted here.

Please let me know how you want to proceed.

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Merriman Hitchman, Linda H - DOT [<mailto:Linda.MerrimanHitchman@dot.wi.gov>]
Sent: Monday, October 29, 2012 12:16 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT
Subject: FW: Maintenance Appropriation Language

Hi Aaron

Met with the Section Chief in the Bureau of Highway Maintenance that is the most involved with delivering the program. He had some very specific as well as some general points to the draft LRB-0254/P1

A couple key points – he want to title the new appropriations as "Routine Maintenance" instead of referencing counties and municipalities. This is in keeping with the program's desire to have the focus be on what is being

delivered as opposed to who is doing the delivery. He is concerned that titling it as I suggested makes it sound too much like an aide program.

He also requests you delete the term "general" in respect to maintenance.

The rest of his suggestions are easier for you to read his points while looking at the draft rather than me trying to explain what his intent is.

In general, if it doesn't conflict with law or appropriate drafting, we'd like to implement his proposed changes.

Please let me know if I need to clarify or follow up.

I'll be resending the sponsorship draft with some requested changes hopefully this afternoon too.

Linda

From: Woltmann, Mark - DOT

Sent: Thursday, October 25, 2012 4:16 PM

To: Merriman Hitchman, Linda H - DOT; Richter, Anna - DOT

Cc: Vieth, David - DOT

Subject: Maintenance Appropriation Language

Linda/Anna; Attached is the file with the comments we discussed about potential changes to the initial LRB draft.

<< File: Comments on LRB.docx >>

Gary, Aaron

To: Merriman Hitchman, Linda H - DOT
Subject: RE: Maintenance Appropriation Language

From: Merriman Hitchman, Linda H - DOT [mailto:Linda.MerrimanHitchman@dot.wi.gov]
Sent: Wednesday, November 07, 2012 3:33 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Thanks, I'm assuming this works, and am copying Paul Nilsen in OGC in case there are any remaining questions.

Linda

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Wednesday, November 07, 2012 3:29 PM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT
Subject: RE: Maintenance Appropriation Language

The language we had developed refers to contracts under s. 84.07 (1). I'm afraid this might be under-inclusive - that it might not capture those general maintenance contracts identified in s. 84.06 (2).

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Merriman Hitchman, Linda H - DOT [mailto:Linda.MerrimanHitchman@dot.wi.gov]
Sent: Wednesday, November 07, 2012 3:10 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT
Subject: RE: Maintenance Appropriation Language

Aaron,
Just so I am clear, you are proposing that the new segregated appropriations for routine maintenance include this cross reference to 84.06, which because it predates the modification to 84.07 clarifies that the authority to execute private contracts for maintenance exists? Thanks

Linda

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Wednesday, November 07, 2012 2:49 PM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT
Subject: RE: Maintenance Appropriation Language

I couldn't find any specific legislative history, but because the provision dates back to about 1943, I think Paul's interpretation is the only reasonable one. (So I've changed my mind.) Given this development, I think the appropriation language needs tweaking. I would like to insert a cross-reference (underscored), making the language read as

follows: "for routine maintenance activities performed under contract with the department as provided in ss. 84.06 (2) (a) and 84.07 (1)."

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Wednesday, November 07, 2012 1:59 PM
To: 'Merriman Hitchman, Linda H - DOT'
Cc: Richter, Anna - DOT
Subject: RE: Maintenance Appropriation Language

Before proceeding further, I'd like to check the legislative history on this provision, as I could change my mind depending on whether it provides any guidance. I'll get back to you shortly. Aaron

Aaron R. Gary
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From: Gary, Aaron
Sent: Wednesday, November 07, 2012 1:54 PM
To: 'Merriman Hitchman, Linda H - DOT'
Cc: Richter, Anna - DOT
Subject: RE: Maintenance Appropriation Language

Hi Linda,

I'm aware of this sentence, but I don't read it as having the same legal effect that Paul does. I have always read this sentence as a short-hand way of saying that private party maintenance contracts under s. 84.07 (1) are subject to competitive bidding, just like construction contracts. I do not read it as expanding the type of maintenance that the private party can perform under those contracts. I therefore think that treatment of s. 84.07 (1) is still necessary if DOT wants to be able to contract out all types of routine maintenance.

Aaron

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From: Merriman Hitchman, Linda H - DOT [<mailto:Linda.MerrimanHitchman@dot.wi.gov>]
Sent: Wednesday, November 07, 2012 1:30 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT
Subject: FW: Maintenance Appropriation Language

Sorry Aaron, but just got this. Could you please look at the email below and let me know if you think this eliminates the need to modify 84.07 as we proposed in my most recent email.

From: Nilsen, Paul - DOT
Sent: Wednesday, November 07, 2012 12:14 PM
To: Vieth, David - DOT; Matheson, Todd - DOT; Merriman Hitchman, Linda H - DOT; Woltmann, Mark - DOT
Cc: Hammer, Paul - DOT; Richter, Anna - DOT
Subject: RE: Maintenance Appropriation Language

All,
DO NOT REQUEST ADDITION OF PRIVATE CONTRACTING TO 84.07(1). IT IS NOT NEEDED.

Here's why: 84.06(2) refers to private maintenance under 84.07(1):

(2) BIDS, CONTRACTS.

84.06(2)(a)

(a) All such highway improvements shall be executed by contract based on bids unless the department finds that another method as provided in sub. (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the department. Except as provided in s. 84.075, the contract shall be awarded to the lowest competent and responsible bidder as determined by the department. If the bid of the lowest competent bidder is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, all bids may be rejected. The department shall, so far as reasonable, follow uniform methods of advertising for bids and may prescribe and require uniform forms of bids and contracts. Except as provided in par. (b), the secretary shall enter into the contract on behalf of the state. Every such contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract involving an expenditure of \$1,000 or more shall not be valid until approved by the governor. The secretary may require the attorney general to examine any contract and any bond submitted in connection with the contract and report on its sufficiency of form and execution. The bond required by s. 779.14 (1m) is exempt from approval by the governor and shall be subject to approval by the secretary. This subsection also applies to contracts with private contractors based on bids for maintenance under s. 84.07.

That language has been around since at least 1990 stats. In contrast, the addition to 84.07(1) of private contracting was 2001Act16—I am not aware of any intention that the 2001 language was intended to clarify or limit or authority to contract for maintenance with privates that existed under 84.06.



State of Wisconsin
2013 - 2014 LEGISLATURE

11/8



LRB-0254/21 PZ
ARG:sac:6

TODAY
if possible

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

agency
draft

LPS: some
sections are
moving.

or private contractors

1

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

control

HIGHWAYS

Under current law, DOT is responsible for maintenance of the state trunk highway system. DOT may perform highway maintenance or it may contract with counties, ~~and~~ municipalities to provide highway maintenance services on state trunk highways. General maintenance activities include snow and ice ~~removal~~, interim repair of highway surfaces, vegetation ~~control~~, and other operations, activities, and processes required on a continuing basis for the preservation of state highways. Maintenance activities also include the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, and intelligent transportation systems (specialized systems, such as roadway detector loops, closed circuit television, variable message signs, or ramp meters, used to improve efficiency or safety). Under current law, "highway improvements" include construction, reconstruction, and rehabilitation of highways and processes incidental to building or bettering highways, but do not include maintenance and specifically do not include the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, or intelligent transportation systems unless incidental to a highway improvement project. ←

(no R) Under current law, highway improvements and highway maintenance are generally funded from different DOT appropriations.

management

, or private contractors

This bill creates new state, federal, and local appropriations dedicated to funding state highway maintenance activities that are performed by counties, ~~or municipalities~~ under contract with DOT. Thus, the bill establishes separate funding for state highway maintenance performed by DOT and for state highway maintenance performed by counties, ~~and municipalities~~ under contract with DOT.

The bill also makes changes with respect to which highway operations and activities are considered highway improvements and which are considered highway maintenance, which affects the source of funding for these operations and activities. Under this bill, highway maintenance activities no longer include, and highway improvements no longer exclude, the installation, replacement, or rehabilitation of traffic control signals and intelligent transportation systems, but maintenance of traffic control signals and intelligent transportation systems are still considered maintenance activities. The bill also specifies that only general maintenance activities, as described by statute, and specified other maintenance activities are excluded from the definition of "highway improvements." In addition, the bill

specifies that the following highway operations or activities are considered highway improvements if they do not include the activities described by statute as general maintenance or the other specifically-described maintenance activities excluded

from the definition of highway improvements: 1) Operations or activities that restore or improve a highway and that add four or more years of useful life to the highway; 2) Operations or activities that are time sensitive and normally associated with emergency situations involving immediate safety risks or some degree of unacceptable mobility delays; and 3) Operations or activities that are life-cycle or investment driven and that are based on an asset management philosophy in which taking action prevents or delays deterioration of highway system functionality. The bill also eliminates statutory references to and descriptions of "special maintenance activities."

Under current law, if DOT contracts with a county or municipality to perform maintenance on state trunk highways, DOT must pay the county or municipality the actual cost of performing the maintenance work based on the itemized and verified accounts submitted by the county or municipality to DOT for the work.

This bill allows DOT and the county or municipality to agree to a payment method and terms other than that required by current law, including payment according to a contract price for maintenance services rather than payment for the actual cost of the maintenance.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 20.395 (3) (aq) *Southeast Wisconsin freeway megaprojects, state funds.* As a
2 continuing appropriation, the amounts in the schedule for southeast Wisconsin
3 freeway megaprojects under s. 84.0145 and for the purpose specified in s. 84.017 (3).
4 This paragraph does not apply to the installation, replacement, rehabilitation, or
5 maintenance of highway signs, ~~traffic control signals~~, highway lighting, or pavement
6 markings, or to the maintenance of traffic control signals or intelligent
7 transportation systems, unless incidental to a southeast Wisconsin freeway
8 megaproject.

9 **SECTION 2.** 20.395 (3) (ax) of the statutes is amended to read:

10 20.395 (3) (ax) *Southeast Wisconsin freeway megaprojects, federal funds.* All
11 moneys received from the federal government for southeast Wisconsin freeway
12 megaprojects under s. 84.0145 and for the purpose specified in s. 84.017 (3), for such
13 purposes. This paragraph does not apply to the installation, replacement,
14 rehabilitation, or maintenance of highway signs, ~~traffic control signals~~, highway
15 lighting, or pavement markings, or to the maintenance of traffic control signals or
16 intelligent transportation systems, unless incidental to a southeast Wisconsin
17 freeway megaproject.

18 **SECTION 3.** 20.395 (3) (cq) of the statutes is amended to read:

19 20.395 (3) (cq) *State highway rehabilitation, state funds.* As a continuing
20 appropriation, the amounts in the schedule for improvement of existing state trunk
21 and connecting highways; for improvement of bridges on state trunk or connecting
22 highways and other bridges for which improvement is a state responsibility, for
23 necessary approach work for such bridges and for replacement of such bridges with
24 at-grade crossing improvements; for the construction and rehabilitation of the
25 national system of interstate and defense highways and bridges and related

1 appurtenances; for ~~special maintenance activities under s. 84.04 on roadside~~
2 ~~improvements~~; for bridges under s. 84.10; for the bridge project under s. 84.115; for
3 payment to a local unit of government for a jurisdictional transfer under s. 84.02 (8);
4 for the disadvantaged business demonstration and training program under s.
5 84.076; for the purpose specified in s. 84.017 (3); for the transfers required under
6 1999 Wisconsin Act 9, section 9250 (1) and 2003 Wisconsin Act 33, section 9153 (4q);
7 and for the purposes described under 1999 Wisconsin Act 9, section 9150 (8g), 2001
8 Wisconsin Act 16, section 9152 (4e), and 2007 Wisconsin Act 20, section 9148 (9i) (b)
9 and (9x). This paragraph does not apply to any southeast Wisconsin freeway
10 megaprojects under s. 84.0145, to any southeast Wisconsin freeway rehabilitation
11 projects under s. 84.014 that also qualify as major highway projects under s. 84.013,
12 or to the installation, replacement, rehabilitation, or maintenance of highway signs,
13 ~~traffic control signals~~, highway lighting, or pavement markings, or to the
14 maintenance of traffic control signals or intelligent transportation systems, unless
15 incidental to the improvement of existing state trunk and connecting highways.

16 SECTION 4. 20.395 (3) (cr) of the statutes is amended to read:

17 20.395 (3) (cr) *Southeast Wisconsin freeway rehabilitation, state funds.* As a
18 continuing appropriation, the amounts in the schedule for rehabilitation of
19 southeast Wisconsin freeways, including reconstruction and interim repair of the
20 Marquette interchange in Milwaukee County. This paragraph does not apply to the
21 installation, replacement, rehabilitation, or maintenance of highway signs, ~~traffic~~
22 ~~control signals~~, highway lighting, or pavement markings, or to the maintenance of
23 traffic control signals or intelligent transportation systems, unless incidental to
24 rehabilitation of southeast Wisconsin freeways. No moneys may be encumbered
25 from this appropriation account after June 30, 2011. Notwithstanding s. 20.001 (3)

1 (c), any unencumbered balance in this appropriation account on July 1, 2011, shall
2 be transferred to the appropriation account under par. (cq) except that the amount
3 specified in 2011 Wisconsin Act 32, section 9148 (7f) (a), shall be transferred to the
4 appropriation account under par. (aq).

5 **SECTION 5.** 20.395 (3) (cv) of the statutes is amended to read:

6 20.395 (3) (cv) *State highway rehabilitation, local funds.* All moneys received
7 from any local unit of government or other source for the specific information sign
8 program under s. 86.195; for improvement of existing state trunk and connecting
9 highways; for improvement of bridges on state trunk or connecting highways and
10 other bridges for which improvement is a state responsibility, for necessary approach
11 work for such bridges and for replacement of such bridges with at-grade crossing
12 improvements; for the construction and rehabilitation of the national system of
13 interstate and defense highways and bridges and related appurtenances; ~~for special~~
14 ~~maintenance activities under s. 84.04 on roadside improvements;~~ for the bridge
15 project under s. 84.115; for the railroad and utility alteration and relocation loan
16 program under s. 84.065; for the purpose specified in s. 84.017 (3); and for the
17 disadvantaged business demonstration and training program under s. 84.076, for
18 such purposes. This paragraph does not apply to any southeast Wisconsin freeway
19 megaprojects under s. 84.0145 or to any southeast Wisconsin freeway rehabilitation
20 projects under s. 84.014 that also qualify as major highway projects under s. 84.013.

21 **SECTION 6.** 20.395 (3) (cx) of the statutes is amended to read:

22 20.395 (3) (cx) *State highway rehabilitation, federal funds.* All moneys
23 received from the federal government for improvement of existing state trunk and
24 connecting highways; for improvement of bridges on state trunk or connecting
25 highways and other bridges for which improvement is a state responsibility, for

1 necessary approach work for such bridges and for replacement of such bridges with
2 at-grade crossing improvements; for the construction and rehabilitation of the
3 national system of interstate and defense highways and bridges and related
4 appurtenances; ~~for special maintenance activities under s. 84.04 on roadside~~
5 ~~improvements~~; for the bridge project under s. 84.115; for the purpose specified in s.
6 84.017 (3); and for the disadvantaged business demonstration and training program
7 under s. 84.076; and all moneys received under 2003 Wisconsin Act 33, section 9153
8 (4q); for such purposes. This paragraph does not apply to any southeast Wisconsin
9 freeway megaprojects under s. 84.0145 or to any southeast Wisconsin freeway
10 rehabilitation projects under s. 84.014 that also qualify as major highway projects
11 under s. 84.013.

12 **SECTION 7.** 20.395 (3) (cy) of the statutes is amended to read:

13 20.395 (3) (cy) *Southeast Wisconsin freeway rehabilitation, federal funds.* All
14 moneys received from the federal government for rehabilitation of southeast
15 Wisconsin freeways, including reconstruction and interim repair of the Marquette
16 interchange in Milwaukee County, for such purposes. This paragraph does not apply
17 to the installation, replacement, rehabilitation, or maintenance of highway signs,
18 ~~traffic control signals~~, highway lighting, or pavement markings, or to the
19 maintenance of traffic control signals or intelligent transportation systems, unless
20 incidental to rehabilitation of southeast Wisconsin freeways. No moneys may be
21 encumbered from this appropriation account after June 30, 2011. Notwithstanding
22 s. 20.001 (3) (c), any unencumbered balance in this appropriation account on July 1,
23 2011, shall be transferred to the appropriation account under par. (cx) except that the
24 amount specified in 2011 Wisconsin Act 32, section 9148 (7f) (c), shall be transferred
25 to the appropriation account under par. (ax).

SECTION 8. 20.395 (3) (eq) of the statutes is amended to read:

20.395 (3) (eq) *Highway maintenance, repair, and traffic system management and operations, state funds.* As a continuing appropriation, the amounts in the schedule for the maintenance and repair of roadside improvements under s. 84.04, state trunk highways under s. 84.07, and bridges that are not on the state trunk highway system under s. 84.10; for permit issuance and other highway operations, including the installation, replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals~~, highway lighting, and pavement markings, and the maintenance of traffic control signals and intelligent transportation systems, under ss. 84.04, 84.07, 84.10, and 348.25 to 348.27 and ch. 349; ~~for the grant under 2005 Wisconsin Act 25, section 9148 (3f);~~ and for the disadvantaged business demonstration and training program under s. 84.076. This paragraph does not apply to special ^{routine} maintenance activities under s. 84.04 ~~on roadside improvements performed by county highway committees or municipalities~~ ² under contract with the department as provided in ⁵ ~~ss. 84.07 (1).~~ 84.06 (2)(a) and

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 9. 20.395 (3) (ev) of the statutes is amended to read:

20.395 (3) (ev) *Highway maintenance, repair, and traffic system management and operations, local funds.* All moneys received from any local unit of government or other sources for the maintenance and repair of roadside improvements under s. 84.04, state trunk highways under s. 84.07, and bridges that are not on the state trunk highway system under s. 84.10; for signing under s. 86.195; for highway operations such as permit issuance, pavement marking, highway signing, traffic ~~signalization~~ signal maintenance, and highway lighting under ss. 84.04, 84.07,

moved →

84.10, and 348.25 to 348.27 and ch. 349; and for the disadvantaged business demonstration and training program under s. 84.076; for such purposes. This paragraph does not apply to special ^{routine} maintenance activities under s. 84.04 on roadside improvements performed by county highway committees or municipalities under contract with the department as provided in ^{s.} 84.07 (1).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 10. 20.395 (3) (ex) of the statutes is amended to read:

20.395 (3) (ex) *Highway maintenance, repair, and traffic system management and operations, federal funds.* All moneys received from the federal government for the maintenance and repair of roadside improvements under s. 84.04, state trunk highways under s. 84.07, and bridges that are not on the state trunk highway system under s. 84.10; for permit issuance and other highway operations, including the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, and pavement markings, and the maintenance of traffic control signals and intelligent transportation systems, under ss. 84.04, 84.07, 84.10, and 348.25 to 348.27 and ch. 349; and for the disadvantaged business demonstration and training program under s. 84.076; for such purposes. This paragraph does not apply to special ^{routine} maintenance activities under s. 84.04 on roadside improvements performed by county highway committees or municipalities under contract with the department as provided in ^{s.} 84.07 (1).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 11. 20.395 (3) ^(es) (fq) of the statutes is created to read:

20.395 (3) ^(es) (fq) ~~County and municipal~~ ^{Ⓡ Routine} maintenance activities, state funds. As a continuing appropriation, the amounts in the schedule for ^{routine} maintenance activities

- (1) performed by county highway committees or municipalities under contract with the
 (2) department as provided in s. 84.07 (1). 84.06(2)(a) and

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

- (3) (ew) SECTION 12. 20.395 (3) (fv) of the statutes is created to read:
 (4) 20.395 (3) (fv) ~~County and municipal~~ ^{① Routine} maintenance activities, local funds. All
 (5) moneys received from any local unit of government or other sources for ^{routine} maintenance
 (6) activities performed by county highway committees or municipalities under contract
 (7) with the department as provided in s. 84.07 (1), for such purposes. 84.06(2)(a) and

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

- (8) (ey) SECTION 13. 20.395 (3) (fx) of the statutes is created to read:
 (9) 20.395 (3) (fx) ~~County and municipal~~ ^{① Routine} maintenance activities, federal funds. All
 (10) moneys received from the federal government for ^{routine} maintenance activities performed
 (11) by county highway committees or municipalities under contract with the
 (12) department as provided in s. 84.07 (1), for such purposes.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

- 13 SECTION 14. 84.06 (1) of the statutes is renumbered 84.06 (1) (intro.) and
 14 amended to read:

- 15 84.06 (1) DEFINITIONS. (intro.) In this section:
 16 (a) Subject to par. (b), "improvement" or "highway improvement" includes
 17 construction, all of the following:

- 18 1. ~~Construction, reconstruction, rehabilitation, and processes incidental to~~
 19 ~~building, fabricating, or bettering a highway or street, but not.~~
 20 (b) 1. General maintenance. The terms do not include the activities described
 21 in s. 84.07 (1).

move
to 8-5

insert
9-18

(b)
① 2. The installation, replacement, rehabilitation, or maintenance of highway
2 signs, ~~traffic control signals~~, highway lighting, or pavement markings, or the
3 maintenance of traffic control signals or intelligent transportation systems, unless
4 incidental to building, fabricating, or bettering a highway or street.

5 SECTION 15. 84.06 (1) (a) 2., 3. and 4. of the statutes are created to read:

6 84.06 (1) (a) 2. Highway operations or activities that restore or improve a
7 highway and that add 4 or more years of useful life to the highway.

8 3. Highway operations or activities that are time sensitive and normally
9 associated with emergency situations involving immediate safety risks or some
10 degree ^{of} ~~or~~ unacceptable mobility delays.

11 4. Highway operations or activities that are life-cycle or investment driven and
12 that are based on an asset management philosophy in which taking action prevents
13 or delays deterioration of highway system functionality.

14 SECTION 16. 84.06 (1) (b) (intro.) ^{and 1.} of the statutes ~~is~~ ^{are} created to read:

15 84.06 (1) (b) (intro.) "Improvement" or "highway improvement" does not
16 include any of the following:

(CS) Routine maintenance

17 SECTION 17. 84.07 (1) of the statutes is amended to read:

18 84.07 (1) ~~STATE EXPENSE, WHEN DONE BY COUNTY OR MUNICIPALITY~~ ^{strike} The state trunk
19 highway system shall be maintained by the state at state expense. The department
20 shall prescribe by rule specifications for such maintenance and may contract with
21 any county highway committee or municipality to have all or certain parts of the
22 work of maintaining the state trunk highways within or beyond the limits of the
23 county or municipality, including interstate bridges, performed by the county or
24 municipality, and any county or municipality may enter into such contract. ~~General~~ ^{strike}

25 ~~maintenance~~ ^{Maintenance} activities include the application of protective coatings, the removal

^{insert}
10-16
strike

1 and control of snow, the removal, treatment and sanding of ice, interim repair of
2 highway surfaces and adjacent structures, and all other operations, activities and
3 processes required on a ^{regular,} ~~routine~~ continuing basis for the preservation of the
4 highways on the state trunk system, and including the care and protection of trees
5 and other roadside vegetation and suitable planting to prevent soil erosion or to
6 beautify highways pursuant to s. 66.1037, and all routine measures deemed
7 necessary to provide adequate traffic service. ~~Special maintenance activities include~~
8 ~~the restoration, reinforcement, complete repair or other activities which the~~
9 ~~department deems are necessary on an individual basis for specified portions of the~~
10 ~~state trunk system.~~ Maintenance activities also include the installation,
11 replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals,~~
12 highway lighting, and pavement markings, and the maintenance of traffic control
13 signals and intelligent transportation systems. The department may contract with
14 a private entity for services or materials or both associated with the installation,
15 replacement, rehabilitation, or maintenance of highway signs, ~~traffic control signals,~~
16 highway lighting, and pavement markings, and the maintenance of traffic control
17 signals and intelligent transportation systems.

****NOTE: Regarding the last sentence of this subsection, I believe the contracting authority for the installation, replacement, or rehabilitation of traffic control signals and intelligent transportation systems falls under s. 84.06 (2) (a), not s. 84.07 (1). Because s. 84.06 (2) (a) already allows (actually, requires) DOT to contract for these improvements, I did not amend s. 84.06 (2) (a). If you want to authorize DOT to undertake these improvements on its own and without bidding, then I believe that I should add a provision to s. 84.06 allowing DOT to install, replace, or rehabilitate traffic control signals and intelligent transportation systems on its own and without putting the work out to bid.

18 **SECTION 18.** 84.07 (2) of the statutes is renumbered 84.07 (2) (a) and amended
19 to read:

20 84.07 (2) (a) When Except as provided in par. (b), when any county or
21 municipality maintains the state trunk highways within or beyond the limits of the

1 county or municipality, including interstate bridges, in compliance with the
2 arrangement with the department, the department shall pay the actual cost of the
3 maintenance, including the allowance for materials and the use of county or
4 municipal machinery and overhead expenses agreed upon in advance. The Except
5 as provided in par. (b), the payments shall be made upon presentation by the county
6 highway committee or municipal clerk of a properly itemized and verified account.

7 The For payments made under this paragraph, the county highway committee or
8 municipal clerk shall present the itemized accounts for ~~general~~ maintenance work *Strike*
9 no later than one month following the period during which the work is performed.

10 **SECTION 19.** 84.07 (2) (b) of the statutes is created to read:

11 84.07 (2) (b) When any county or municipality maintains the state trunk
12 highways within or beyond the limits of the county or municipality, including
13 interstate bridges, in compliance with the arrangement with the department, the
14 department and the county or municipality may agree to a payment method and
15 terms other than that specified in par. (a), including payment according to a contract
16 price for maintenance services rather than payment of the actual cost of the
17 maintenance.

18 (END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0254/P2ins
ARG:.....

1

2 **INSERT ANAL:**

(no P) statutory references to "general" maintenance activities and

3

4 **INSERT 9-18:**

5 1. Construction, reconstruction, rehabilitation, and processes incidental to
6 building, fabricating, or bettering a highway or street, ~~but not maintenance.~~ The
7 ~~terms do not include the.~~

8

9 **INSERT 10-16:**

10 1. Maintenance activities described in s. 84.07 (1). ✓

11

Gary, Aaron

From: Merriman Hitchman, Linda H - DOT <Linda.MerrimanHitchman@dot.wi.gov>
Sent: Thursday, November 08, 2012 2:59 PM
To: Gary, Aaron
Cc: Nilsen, Paul - DOT; Hammer, Paul - DOT; Richter, Anna - DOT
Subject: question on maintenance draft

Importance: High

Hi Aaron

I thought I understood the cross reference discussion but I realize now I didn't fully. I didn't realize the cross reference would also apply in 20.395 (3)(eq) – doesn't that mean that (3)(eq) couldn't be used to fund any private contracted routine maintenance? If so, I think that presents a problem. The Department doesn't actually do any maintenance itself, it hires everything.

We have been discussing that the new (3)(es) needs to be able to hire privates for routine maintenance that would ordinarily be done by the counties in case the counties won't or can't do it. But there are also a lot of things we hire privates for that are not done by the counties, pavement marking, bridge maintenance, etc. I suppose the distinction may be these are not "routine" as we have now characterized that term, but I still am concerned we might be limiting ourselves in how 365/(3)(eq) can be used.

I am copying Paul Nilsen because I he had already raised this concern too.

Linda

Linda Merriman Hitchman

Budget and Policy Analyst
Office of Policy, Budget and Finance - Room 132-B
Wisconsin Department of Transportation
4802 Sheboygan Avenue - P.O. Box 7910
Madison, WI 53707-7910
linda.merrimanhitchman@dot.wi.gov **608-266-1585**

Gary, Aaron

From: Gary, Aaron
Sent: Friday, November 09, 2012 3:31 PM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT; Hammer, Paul - DOT
Subject: RE: final maintenance changes

OK, I made these changes and put the draft into editing. You'll have it sometime Monday morning.

Regarding item (2), as I understand it, any activity related to a roadside improvement (construction or maintenance) can be funded from the SHR apprn (3) (cq), and maintenance and repair of roadside improvements can also be funded under the maintenance (newly named "system management") apprn (3) (eq). No need to respond unless I'm mistaken on this. Thanks.

Have a good weekend.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Merriman Hitchman, Linda H - DOT [<mailto:Linda.MerrimanHitchman@dot.wi.gov>]
Sent: Friday, November 09, 2012 2:58 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT; Hammer, Paul - DOT
Subject: final maintenance changes

Aaron

Two final sets of changes to 0254/P2 please:

- (1) As discussed, the changes to (3)(eq), (ev) and (ex) to eliminate the cross reference to s. 84.06(2) (a) and add back the county/muni language so that private maintenance contracts could then be funded (for routine maintenance) from the new set of appropriations or the old set of appropriations. While not impacted by this change, private contractors also can be funded under (3)(eq), (ev) and (ex) for non-routine maintenance.
- (2) In case our change to eliminate special maintenance could have the unintended consequence of limiting State Highway Rehabilitation funding for roadside improvements, for appropriations (3)(cq), (cv) and (cx), we want to restore the words "for activities under s. 84.04 on roadside improvements." These were deleted as part of our request to eliminate "Special maintenance". This is Paul Nilsen's suggestion so please copy him if you don't agree this makes sense.

Thank you again for your patience and assistance.

Linda

From: Gary, Aaron [<mailto:Aaron.Gary@legis.wisconsin.gov>]

Sent: Thursday, November 08, 2012 3:38 PM
To: Merriman Hitchman, Linda H - DOT
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT; Hammer, Paul - DOT
Subject: RE: maintenance follow up #2

OK, I can eliminate the cross reference to s. 84.06 (2) (a) in ss. 20.395 (3) (eq), (ev), and (ex) and add back in the county/muni language so that private maintenance contracts could then be funded (for routine maintenance) from the new set of appropriations or the old set of appropriations. Obviously this draft has significantly evolved from the instructions first given me. I did not realize that DOT intended this funding overlap; I thought the objective was to create a new set of appropriations so that certain maintenance activities would be funded from the new appropriations and not from the old appropriations – to do so the inclusionary language in one appropriation needs to be exactly the same as the exclusionary language in the other. But now that I know that DOT wants dual sources of funding for private contractor routine maintenance, I can (and will) modify as you indicate.

Please let me know if there are any other changes to the /P2 so I can do them all at once tomorrow.

Thanks. Aaron

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From: Merriman Hitchman, Linda H - DOT [<mailto:Linda.MerrimanHitchman@dot.wi.gov>]
Sent: Thursday, November 08, 2012 3:21 PM
To: Gary, Aaron
Cc: Richter, Anna - DOT; Nilsen, Paul - DOT
Subject: maintenance follow up #2

Hi Aaron

In looking through 0254/P2 I realized that in 20.395(3)(eq) the first draft says This paragraph does not apply to maintenance activities performed by county highway committees or municipalities under contract with the department as provided in s. 84.07 (1).

P2 says This paragraph does not apply to routine maintenance activities performed under contract with the department as provided in ss. 84.06 (2) (a) and 84.07 (1).

Couldn't we leave in the reference to county highway committees or municipalities? What we want is to be able to pay private companies out of 365/(3)(eq) and 368/(3)(es) but only pay counties out of (3)(es). That may also fix the concern or make unnecessary that appropriation's cross reference to 84.06(2)(a).

But I am neither an attorney nor a drafter so perhaps I am over simplifying.

Linda

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